



HULMAN REGIONAL AIRPORT AUTHORITY

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October 24, 1997

Honorable William F. Caton, Secretary  
Federal Communications Commission  
1919 M St., N.W.  
Washington, DC 20554

RE: Objection to Proposed Rule  
MM Docket No. 97-182 and FCC Docket No. 97-296  
Preemption of State and Local Zoning and  
Land Use Restrictions on the Siting, Placement and Construction  
of Broadcast Transmission Facilities

Dear Secretary Caton:

The Hulman Regional Airport Authority (HRAA) objects to the Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities as proposed in the above referenced Dockets. The HRAA offers the following comments in support of our objection:

1. The Notice of Proposed Rule Making (NPRM) specifically preempts a state or local authority's regulations that impair a proponent's ability to modify or construct their facilities unless, the state or local authorities can demonstrate that their objections are related to health and safety objectives. However, the NPRM provides no guidance as to how this demonstration is to be achieved. Additionally, assuming a qualified authority is used in deciding whether a state or local authority's demonstration has been successful or not, the NPRM does not define who this authority might be or, again, how the determination is to be accomplished.
2. Rather than require that state and local authorities prove that a particular proposal meets the health or safety exception provision (or any other state/local provision for that matter) the proponents of the transmission facilities should carry the burden of proof in demonstrating that it will, in fact, be impossible to meet the roll-out schedule if action by a particular state or local authority does not occur in a given timeframe.

The NPRM already states that the FCC has provided an accelerated but, reasonable schedule for implementation of the DTV roll-out. This schedule presented by the FCC would have certainly

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considered a reasonable period of time (other than what is proposed in the NPRM) for state and local authorities to review the application. Accordingly, the use of cart blanche preemptive power simply because an arbitrary timeframe is not met will dismantle well established and defined state/local procedures and will, consequently, lead to many poor decisions being made by state/local authorities and the FCC. In short, it appears the FCC is proposing that the "baby be thrown out with the bath water".

3. Although the NPRM relies almost exclusively on the Digital Television (DTV) roll-out schedule as justification for utilizing the preemptive authority it claims to possess, the NPRM is not limited to the DTV technology and, in fact, specifically includes other types of transmission towers. Furthermore, the "other types" of towers specifically included in the NPRM are not even required to be affiliated with the DTV roll-out effort. This appears to be an effort to exploit the proposed rule change effort by hiding behind DTV justification and thereby circumventing current state and local zoning for non-DTV proposals.

The use of preemptive authority for virtually every type of transmission tower would, effectively, declare "open-season" on airport facilities, and others, whose activities conflict with the presence of said transmission facilities, which are obstructions. These ever-lasting and negative impacts on our nation's airports are inappropriate for a single technology that is to be fully deployed in a matter of just a few years.

4. The time limitations for state and local action presented in the NPRM, in many instances, will create a requirement for additional staff and/or more zoning board meetings and create additional expenses to units of local government. Unless those costs can be directly billed to the proponents of transmission towers, the proposed rule amounts to an unfunded federal mandate which, of course, is illegal.

This is especially disturbing since many delays in the zoning approval process are a direct result of the proponent providing either, inadequate or inaccurate information to begin with. Additionally, the tight timeframe presented in the NPRM and proposed automatic approval provision, will likely result in hasty decisions being made that will potentially be harmful to local citizenry or as an alternative, result in local government denying all requests within the specified timeframe in order to provide more time for a thorough review during the appeal process which is available to the proponents.

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5. Finally, and perhaps most troubling, is the fact that the NPRM completely ignores the significant economic losses that will be incurred by airports and the airlines/aircraft that use them by having landing/approach minimums altered to accommodate towers. It is very probable that many proposed towers will be constructed far enough away from an airport so as not to be a safety concern but, close enough to the airport to require an increase of visibility/ceiling minimums at individual airports.

These increases in minimums directly degrade the utility of airport facilities and the aircraft that use them. In fact, this degradation of utility would certainly cost airlines and airports extraordinary sums of money (far exceeding the federal threshold that requires an economic impact analysis for this proposed rule). Since the NPRM only addressed health & safety reasons for precluding FCC preemption, it appears that the billions of dollars spent annually to improve airports and the billions of dollars spent annually to improve the capability of aircraft will be ignored by the FCC in its decision making process for preemption.

In conclusion, it is feared that the proposed rule, as written, is woefully vague as it relates to the exceptions for health and safety and it appears to provide significant loopholes for broadcasters to slip through in the zoning approval process. Furthermore, the complete absence of discussion in the NPRM on economic losses to be incurred by the air transportation industry omits an overwhelmingly significant factor that should be considered.

FCC's omission of the economic costs consideration denies the public an opportunity to weigh the relative importance of the rapid deployment of a single commercial technology, DTV, with the massive investments in our nation's air transportation infrastructure, including aircraft. The proposed rule severely jeopardizes the mechanisms designed to protect our country's investment in the aviation sector of our economy from the reckless encroachment of transmission towers.

For these reasons, the Hulman Regional Airport Authority objects to the proposal and urges the FCC to deny the petition for the proposed rule change.

Sincerely,

HULMAN REGIONAL AIRPORT AUTHORITY



Charles J. Goodwin  
Airport Director